

REMARKS

The Examiner required an election of species of one of the following inventions:

Species I: Claims 1-13, 17, 29 and 34 directed to a construction of a microphone assembly; and

Species II: Claims 1, 14-16, 18-28, 30-33 and 35 directed to the processing means and controlling means for programming an electronic communication device and a microphone assembly, and the connection means for connecting the electronic communication device to an external programming system.

In response to the Examiner's election of species requirement, Applicants provisionally elect, with traverse, to prosecute Species I, for which at least claims 1-13, 17, 29 and 34 are readable on. Further, at least, claim 1 is generic.

Applicants specifically reserve the right to file divisional applications directed to non elected claims 14-16, 18-28, 30-33 and 35.

Foremost, it is submitted that the Examiner's assertion that no claims are generic appears improper as the Examiner's grouping of the species include claim 1 in both species. Thus, it is respectfully submitted that at least claim 1 must be generic.

Further, Applicants respectfully traverse the election of species requirement. In particular, as set forth in M.P.E.P. § 806.04(f), claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but

not in a second, while a second claim recites limitations disclosed only for the second species and not the first. In this case, the features of the controlling means of claim 14 is part of the microphone assembly of claim 1, and thus, is not mutually exclusive.

Further, as set forth in 37 C.F.R. § 1.146, a reasonable number of species are permitted in a single application. The examination of all the species together in one application would not place an undue burden on the Examiner. It is respectfully submitted that the Examiner's election of species requirement is improper in view of the fact that a reasonable number of species are set forth in the present application, and respectfully requested to reconsider her election of species requirement and act on all of the claims.

Further, it is also respectfully submitted that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one species would encompass a search for the subject matter of the remaining claims.

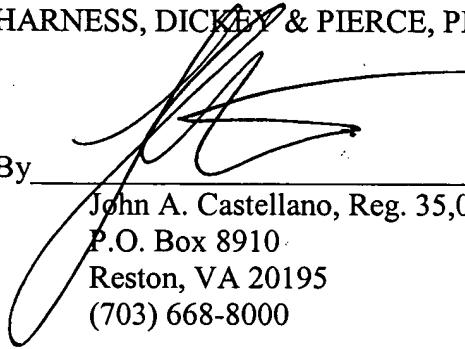
Upon allowance of claim 1, Applicants respectfully request rejoinder of claims 14-16, 18-28, 30-33 and 35.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding election of species requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By 

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